

BEFORE THE DEPARTMENT OF PUBLIC  
HEALTH AND HUMAN SERVICES OF THE  
STATE OF MONTANA

In the matter of the amendment of	)	NOTICE OF PUBLIC HEARING
ARM 37.40.307, 37.40.311, and	)	ON PROPOSED AMENDMENT
37.40.361 pertaining to Medicaid	)	
reimbursement of nursing facilities	)	

TO: All Interested Persons

1. On May 10, 2006, at 10:30 a.m., a public hearing will be held in the auditorium of the Department of Public Health and Human Services Building, 111 N. Sanders, Helena, Montana to consider the proposed amendment of the above-stated rules.

The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who need an alternative accessible format of this notice or provide reasonable accommodations at the public hearing site. If you need to request an accommodation, contact the department no later than 5:00 p.m. on May 1, 2006, to advise us of the nature of the accommodation that you need. Please contact Dawn Sliva, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena, MT 59604-4210; telephone (406)444-5622; FAX (406)444-1970; e-mail dphhslegal@mt.gov.

2. The rules as proposed to be amended provide as follows. Matter to be added is underlined. Matter to be deleted is interlined.

37.40.307 NURSING FACILITY REIMBURSEMENT (1) remains the same.

(2) Effective July 1, 2001, and in subsequent rate years, nursing facilities will be reimbursed using a price based reimbursement methodology. The rate for each facility will be determined using the operating component defined in (2)(a) and the direct resident care component defined in (2)(b):

(a) and (b) remain the same.

(c) The statewide price for nursing facility services will be determined each year ~~though~~ through a public process. Factors that could be considered in the establishment of this price include the cost of providing nursing facility services, ~~m~~Medicaid recipients access to nursing facility services, and the quality of nursing facility care.

(d) The total payment rate available for the period July 1, ~~2005~~ 2006 through June 30, ~~2006~~ 2007 will be the rate as computed in (5), plus any additional amount computed in ARM 37.40.311.

(3) Providers who, as of July 1 of the rate year, have not filed with the department a cost report covering a period of at least six months participation in the ~~m~~Medicaid program in a newly constructed facility shall have a rate set at the statewide median price as computed on July 1, ~~2005~~ 2006. Following a change in provider as defined in ARM 37.40.325, the per diem rate for the new provider shall

be set at the previous provider's rate, as if no change in provider had occurred.  
(4) through (12) remain the same.

AUTH: 53-6-113, MCA

IMP: 53-6-101, 53-6-111, 53-6-113, MCA

37.40.311 RATE ADJUSTMENT FOR COUNTY FUNDED RURAL NURSING FACILITIES (1) remains the same.

(2) A nursing facility is eligible to participate in this lump sum payment distribution if it is a nonstate government owned or operated facility.

(a) remains the same.

(b) In order to qualify for this lump sum adjustment, each county on behalf of its nonstate government owned or operated facility must enter into a written agreement to transfer local county funds to be used as matching funds by the department. This transfer option is voluntary, but those ~~facilities~~ counties that agree to participate must abide by the terms of the written agreement.

(3) through (5)(a) remain the same.

(6) "Normal operating expenses" and "costs" include, but are not limited to:

(a) through (c) remain the same.

(d) payment of facility construction bonds or loans;

(e) remains the same.

~~(f) human resources management;~~

~~(g) management services;~~

~~(h) (f) payments in lieu of taxes (PILT)~~ rent based on depreciation cost of county buildings occupied by nursing facility;

~~(i) (g) mortgage or rent payments;~~

~~(j) (h) payment of building insurance;~~

~~(k) forgiveness of rent or other debts;~~

~~(l) (i) other business relationships with county governments unrelated to mMedicaid in which there is no connection to mMedicaid payments; and~~

~~(m) (j) legitimate in-kind services provided by the county to the nursing facility without actual charge, such as building maintenance, legal services, accounting, and advertising.~~

(7) Charges for ~~in-kind~~ services must be reasonable and the services must be documented.

(a) Documentation supporting charges ~~for in-kind services~~ are subject to the audit and record retention provisions in ARM 37.85.414.

AUTH: 53-6-113, MCA

IMP: 53-6-101, 53-6-111, 53-6-113, MCA

37.40.361 DIRECT CARE WAGE REPORTING/ADDITIONAL PAYMENTS FOR DIRECT CARE WAGE AND BENEFITS INCREASES (1) remains the same.

(2) The department will pay mMedicaid certified nursing care facilities located in Montana that submit an approved request to the department a per day add-on payment in addition to the amount paid as provided in (1) as an add-on to their computed mMedicaid payment rate to be used only for wage and benefit increases

for direct care workers in nursing facilities.

(a) through (c) remain the same.

(d) The department shall make retroactive adjustment to the facility payment rate established on July 1, 2005 that will reduce the ~~the~~ Medicaid per day payment amount by the amount of funds that have been designated for the direct care wage add-on for any nonparticipating or nonqualifying facility. Any amount paid by the department up to that time for the direct care wage add-on shall be recovered by the department.

(3) remains the same.

AUTH: 53-2-201, 53-6-113, MCA

IMP: 53-2-201, 53-6-101, 53-6-111, 53-6-113, MCA

3. The Department of Public Health and Human Services (the department) is proposing the amendment of ARM 37.40.307, Nursing Facility Reimbursement, 37.40.311, Rate Adjustment for County Funded Rural Nursing Facilities, and 37.40.361, Direct Care Wage Reporting/Additional Payments for Direct Care Wage and Benefits Increases, rules pertaining to Medicaid reimbursement of nursing facilities. These amendments are intended to implement legislative appropriations for state fiscal year 2007 for the purpose of increasing Medicaid reimbursement for nursing facilities. No changes in the methodology for computation of reimbursement is proposed. The proposed rule changes are necessary to preserve the viability of Montana's nursing facilities and to assure the availability of quality nursing services to Medicaid eligible residents.

The department did not have available, at the time of publication, all of the information that will be necessary to establish final payment rates for nursing facility providers effective July 1, 2006. The department will provide rate sheets to all providers in advance of the rule hearing, for verification purposes and in order to facilitate comments, when final case mix information, Medicaid utilization data, and other details necessary to compute accurate reimbursement rates become available. The rate sheets will distribute the appropriated funding in order to meet the department goal of a price based system of reimbursement and the legislative goals facilitated by rate increases.

The 2005 Montana legislature, in House Bill 749 (Chapter 523, Laws of Montana, 2005) increased the nursing facility provider tax assessed on occupied nursing facility beds from \$7.05 to \$8.30 in fiscal year 2007 to provide additional state special revenue and appropriated it to fund nursing facility rate increases. The proposed rate increases are necessary to maintain the viability of Montana's nursing facilities and to assure that quality nursing facility services are available to Medicaid eligible residents.

The department considered and rejected the idea of maintaining nursing facility reimbursement rates at current levels. This would not have been sufficient to continue a price based nursing facility reimbursement approach. Under the alternative, the department would have been faced with the following issues. The

statewide occupancy rate is 75.2% and continues to decline in Montana nursing facilities. At the same time, the level of care needed by a typical nursing facility resident is increasing. Nursing facility residents are being admitted at an older age with medically fragile and complex care needs that can no longer be met in home or community settings. As the trends toward lower occupancy and increased acuity of care continue, it becomes more important that nursing facility providers receive rate increases that reflect the increased cost of doing business. If Medicaid rates do not keep pace with costs, small rural providers of nursing facility services will find it more difficult to keep their doors open. Decreasing occupancy levels and the inability to predict the level of Medicaid funding will make it difficult for nursing facilities to determine the best way to provide services in rural communities. Increased costs due to lower occupancy levels and unpredictability in the system of reimbursement are likely to be passed on to privately paying and privately insured residents.

The department is also proposing amendments to ARM 37.40.311 to incorporate additions to and deletions from the list of normal operating expenses and costs of conducting business allowable under that rule for "at risk" nursing facilities. These changes are necessary to obtain authorization from the Centers for Medicare and Medicaid Services (CMS), the federal agency responsible for regulating state Medicaid programs, to continue federal financial participation in the lump sum and "at risk" payments to nursing facilities. The department considered and rejected the alternative of abandoning the "at risk" payments entirely. This alternative would have had the same effects as maintaining nursing facility reimbursement at current levels, discussed in the previous paragraph.

The department is taking this opportunity to incorporate changes in terminology and to update the format of rules, where necessary, to clarify and make them more understandable. Minor format changes are proposed that would conform these rules to current Secretary of State standards. No substantive change is intended by these format changes.

The specific proposed changes are discussed below.

#### ARM 37.40.307

The proposed amendments to this rule are intended to update the period for which the department computes nursing facility reimbursement to coincide with state fiscal year 2007. They would also change the date as of which the statewide median price would be calculated to July 1, 2007. The proposed amendments would continue the existing mechanism for reimbursing nursing facilities for services provided to Medicaid eligible residents. No change in the methodology of computing rates is proposed.

#### ARM 37.40.311

The department proposes to add and delete some examples of normal operating expenses and costs of conducting business allowable under the "at risk" lump sum

payment program, in accordance with federal guidance from CMS. The proposed changes are intended to conform the rule to the department's augmented understanding of transactions allowed between a county owned or operated nursing facility and the county. Continued federal financial participation in the "at risk" program is conditioned on enactment of the changes proposed by the department. Failure to adopt the changes proposed for this rule would result in the loss of federal financial participation in and the discontinuation of the program.

#### ARM 37.40.361

The amendments proposed for this rule are intended to specify the rate referred to in the rule and to make the provision for retroactive rate adjustment easier for the department to maintain. The term "payment rate" would become "facility payment rate." This would make the terminology used in this rule specific, so that the reader will understand exactly which payment rate will be retroactively adjusted. The department is also proposing deletion of the reference to the date a facility payment rate is adjusted. The current rule text requires the department to amend the rule annually to keep pace with changing rates. The proposed deletion would refer simply to the facility payment rate. The department intends this provision to be interpreted as referring to the facility payment rate or rates in place throughout the period affected by the adjustment.

#### Estimated financial and budget impacts

The cost of the proposed rule changes is expected to equal legislative appropriations for nursing facility reimbursement in state fiscal year 2007. The total state and federal funding available for fiscal year 2007 is currently projected at \$143,851,379, including \$19,531,250 in state special and federal special revenue related to nursing facility provider taxes. This amount considers the increase in the nursing facility provider tax from \$7.05 per day to \$8.30 per day, an increase of \$1.25 per day in fiscal year 2007. The estimated total funding available for fiscal year 2007 for nursing facility reimbursement is estimated at approximately \$173,429,965 of combined state funds, federal funds, and patient contributions. Medicaid bed days for state fiscal year 2007 are estimated at 1,187,895 using estimates of Medicaid caseload. The estimated financial impact of the proposed provider utilization fee increases is an increase of approximately \$2,829,416 in state revenue, federal funds, and patient contributions in fiscal year 2007 over the fiscal year 2006 funding levels.

The estimated total funding impact of the one time payments to "at risk" nonstate governmental providers and other nursing facilities not determined to be "at risk", is approximately \$6,830,412 state special revenue funds and approximately \$23,266,500 total appropriated funding for the nursing facility program.

#### Persons and entities affected

A total of 91 nursing facilities enrolled in the Medicaid program in Montana would be

affected by the proposed reimbursement increases. There are 32 nonstate government owned or operated nursing facilities participating in the one time lump sum payments. There are 59 other "at risk" nursing facilities eligible to receive supplemental payments.

4. Interested persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to Dawn Sliva, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena, MT 59604-4210, no later than 5:00 p.m. on May 18, 2006. Data, views, or arguments may also be submitted by facsimile (406)444-1970 or by electronic mail via the Internet to dphhslegal@mt.gov. The department also maintains lists of persons interested in receiving notice of administrative rule changes. These lists are compiled according to subjects or programs of interest. For placement on the mailing list, please write the person at the address above.

5. The Office of Legal Affairs, Department of Public Health and Human Services has been designated to preside over and conduct the hearing.

/s/ Dawn Sliva  
Rule Reviewer

/s/ Joan Miles  
Director, Public Health and  
Human Services

Certified to the Secretary of State April 10, 2006.